



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR )  
AN ORDER AUTHORIZING VITTS NET- )  
WORKS INC., TO PROVIDE FACILITIES- )  
BASED AND RESOLD LOCAL EXCHANGE )  
AND INTEREXCHANGE TELECOMMUNI- )  
CATIONS SERVICES THROUGHOUT )  
NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00010026

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated January 3, 2000 Vits Networks, Inc. (Petitioner or Vits) filed a petition with the Board of Public Utilities (Board) requesting authority to provide non-switched resold and facilities-based local exchange and interexchange services throughout the State of New Jersey. Petitioner, as part of its petition, as well as by its letter in response to a Staff questionnaire on November 2, 1999, and by letters of March 23, 2000 and April 3, 2000, states that its financial information as contained in these documents is highly proprietary and confidential and wishes to have it protected from public disclosure.

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on August 19, 1996. This was amended on March 30, 1998 and the name changed to Vits Networks, Inc. Petitioner's principal offices are located at 77 Sundial Avenue Manchester, New Hampshire 03108. Petition at 1.

Petitioner submitted copies of its Articles of Incorporation, Delaware and New Jersey Certificates of Good Standing and its New Jersey authority to operate as a foreign corporation. Petition at 3, Exhibit 1. According to the petition, Vits was formed to provide dedicated non-switched telecommunications service, including resold and facilities-based local exchange and interexchange services. Petition at 1. Petitioner advised that Vits and its affiliates are in the process of obtaining authority to provide telecommunications services in Connecticut and that Vits currently is certified as a Competitive Local Exchange Carrier (CLEC) to provide service in New Hampshire, Maine, Massachusetts, Vermont, Rhode Island and New York. Petition at 5. Vits stated that it has not been denied authority to provide telecommunications services, in any State, and has no pending civil, criminal or administrative actions against it.

Vitts negotiated an interconnection agreement with Bell Atlantic-New Jersey, Inc. (BA-NJ) which was approved by the Board on February 6, 2000 (Docket TO99050325).

By letter dated March 23, 2000 Petitioner stated that it currently has approximately 200 employees, none of which are currently based in New Jersey. Letter dated March 23, 2000 at 1.

In its petition, Petitioner advised that it seeks authority to provide facilities-based and resold non-switched local exchange and interexchange telecommunications services to business customers throughout New Jersey. Petition at 1. According to the petition, Vitts intends to provide its services utilizing a combination of its own facilities and the resold facilities of other carriers. Petitioner stated that it intends to provide a range of resold and facilities-based local exchange and interexchange services, which may include, but will not be limited to data transport services and high speed internet access. Petition at 4, and November 2, 1999 letter of response.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3, which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA). Petitioner advised that in the interest of efficiency and since Petitioner's services are not subject to rate of return regulation, its books and records will be maintained in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 7. Petitioner also requested a waiver pursuant to N.J.A.C. 14:1-5.15(a), which provides for the filing of petitions for authority to keep books and records outside the State of New Jersey. Petitioner requested that all books, records, documents and other writings incident to the conduct of business of Petitioner in the State of New Jersey be kept at Petitioner's corporate offices in Manchester, New Hampshire. Petition at 7. Petitioner stated that a requirement of storage of its books and records in the State of New Jersey would place an undue financial burden on Petitioner as it competes with other local exchange carriers in the State of New Jersey. Petitioner also stated that upon written notice from the Board it will produce its books and records at such time and place within New Jersey as the Board may designate.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 6. Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will enhance the telecommunications infrastructure in the State of New Jersey and will facilitate economic development. Ibid.

With regard to its managerial qualifications, Vitts stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Ibid. Petitioner submitted the professional biographies of its key personnel who, according to Vitts, are well qualified to execute its business plans, having extensive managerial and technical experience in the telecommunications industry. Petition at 6, Exhibit 2.

Petitioner represented that it has access to the capital necessary to conduct the telecommunications operations of the requested services as demonstrated by the financial information contained in its November 2, 1999 response to a Staff questionnaire and its letters dated March 23, 2000 and April 3, 2000. Petitioner asserted that these letters contain extremely

sensitive and strategic information that could be used by competitors to determine market share, revenue and other information damaging to Votts in the marketplace. Petitioner also stated that it has used its best efforts to keep and maintain such information confidential and due to the sensitive nature of this information has requested the Board to limit access to such information.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.(b)(1) and (3).

Therefore, having reviewed Votts petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide non-switched local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b) 1 and N.J.A.C. 14:1-5.15(a), from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

With regard to Petitioner's financial information as submitted in its Petition as well as its response to Staff's questionnaire and its letters of March 23, 2000 and April 3, 2000 the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1 that this

information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the financial information contained in these documents be kept under seal.

DATED:  
4/28/00

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
CARMEN J. ARMENTI  
COMMISSIONER

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
EDWARD D. BESLOW  
ACTING BOARD SECRETARY

